

## REMARKS

Claims 1, 2, 4-10, 15-18, and 24 were pending in this application. Claims 2, 4, and 15-18 are canceled as drawn to non-elected Groups. Claim 1 also has been canceled. Applicants expressly reserve the right to pursue protection of any or all of the canceled subject matter in a subsequent application. Claims 5-10 are withdrawn. Claim 24 (and withdrawn claims 5 and 8) has (have) been amended. No new matter is introduced by the foregoing amendment(s).

After entry of this amendment **claims 5-10 and 24 are pending in this application.**

### Claim Rejections under 35 U.S.C. §102:

Claim 1 has been rejected under 35 U.S.C. §102(a) as being allegedly anticipated by the sequence any one of the following Genbank accession numbers: (i) AY274119.1 GI:29826276, allegedly available 14 April 2003, allegedly 99.9% identical to SEQ ID NO: 1; (ii) AY278487.1 GI:30027613, allegedly available 21 April 2003, allegedly 96.8% identical to SEQ ID NO: 1; (iii) AY278554.1 GI:30023518, allegedly available 18 April 2003, allegedly 98.2% identical to SEQ ID NO: 1; or (iv) AY278491.1 GI:30023952, allegedly available 18 April 2003, allegedly 99.9% identical to SEQ ID NO: 1.

Applicants reserve the right to traverse this rejection in this or a continuing application. Nevertheless, to facilitate prosecution of this application, claim 1 has been canceled. Thus, this rejection is moot and Applicants request that it be withdrawn.

Claim 1 has been rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Peiris *et al.*, U.S. Pat. App. Pub. No. 2005/0181357, or Chan *et al.*, PCT Pub. No. WO2004/085633.

Applicants reserve the right to traverse this rejection in this or a continuing application. Nevertheless, to facilitate prosecution of this application, claim 1 has been canceled. Thus, this rejection is moot and Applicants request that it be withdrawn.

Claims 1 and 24 have been rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Rappuoli *et al.*, PCT Pub. No. WO2004/092360. Applicants traverse this rejection.

Claim 1 has been canceled and this rejection is moot as to that claim.

With regard to claim 24, the Office contends that the sequence shown in Figure 501 of U.S. Provisional Application 60/464,109 (to which PCT Publication No. WO 2004/092360, Rappuoli *et al.* claims priority) “appears to be the same as applicant’s SEQ ID NO: 1” and, therefore, anticipates claim 24. However, the Office admits that the sequence shown in Figure 501 of Rappuoli *et al.* was “published on the internet by the Centers for Disease Control.” Even if the sequence shown in Figure 501 of Rappuoli *et al.* is the same as SEQ ID NO: 1, it is Applicants’ own work. Accordingly, Figure 501 of Rappuoli *et al.* is not “an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent” as required by 35 U.S.C. §102(e). In fact, far from anticipating claim 24, Rappuoli *et al.* establishes that Applicants had possession of the SEQ ID NO: 1 at least as early as April 14, 2003. Examiner Mosher is invited to contact the Applicants’ undersigned representative if additional information is required to support the foregoing statements.

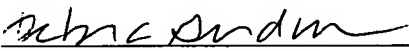
Applicants respectfully request that this rejection be withdrawn.

### CONCLUSION

It is respectfully submitted that the present claims are in a condition for allowance. If any issues remain, the Examiner is requested to contact the undersigned prior to issuance of the next Office action in order to arrange a telephone interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution and allowance of the claims.

Respectfully submitted,

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